

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JONATHON CORBETT,

Plaintiff,

DECLARATION

-against-

20-CV-4864 (LGS)

ANDREW M. CUOMO, in his official capacity as Governor
of the State of New York,

Defendant.

Brad Hutton, on the date noted below and pursuant to § 1746 of title 28 of the United States Code, declares the following to be true and correct under penalty of perjury under the laws of the United States of America:

1. My name is Brad Hutton, and I am the Deputy Commissioner of the Office of Public Health at the New York State Department of Health. I have been the Deputy Commissioner of the Office of Public Health since July 2016 and have been employed by the Department since 1994. In my position, I oversee the Office of Public Health, which has more than 3,000 employees statewide. I make this declaration to provide a brief background of the spread of the novel coronavirus, the COVID-19 illness, and the grave public health emergency currently besieging the State of New York.

January–February 2020 — Novel Coronavirus Spreads Worldwide

2. On January 7, 2020, following an outbreak of pneumonia of unknown etiology in China's Wuhan Province, Chinese authorities identified a novel coronavirus—COVID-19. It's

spread around the world has been well documented. *See* Exhibit A (World Health Organization (“WHO”) Situation Report 1).

March 2020 — COVID-19 Surges in the State of New York

3. New York recorded its first cases of COVID-19 on March 1, 2020, in New York City and on March 2, 2020, in Westchester County.
4. On March 7, 2020, Governor Cuomo declared a State of Emergency. As of March 7, 2020, 60 people had tested positive for COVID-19 in the State of New York. *See* Exhibit B (Images from the New York State Department of Health’s COVID-19 Tracker). Cases in the United States totaled 275. *See* Exhibit C (Images from the Centers for Disease Control’s (“CDC”) Coronavirus Disease Dashboard). Cases worldwide totaled 179,111, with 7,426 deaths reported. *See* Exhibit D (WHO Situation Report 57).
5. On March 11, 2020, the World Health Organization declared COVID-19 a global pandemic. *See* Exhibit E (WHO Pandemic Announcement).
6. By March 20, 2020, the number of individuals testing positive for COVID-19 in New York approached 10,000, and deaths exceeded 150. *See* Exhibit F (Image from Johns Hopkins University’s Coronavirus Resource Center).

New York’s Health Care System Is Nearly Overwhelmed

7. By April 20, 2020, over 267,000 individuals had tested positive for COVID-19, and over 13,000 people had died from COVID-19. *See* Exhibit G (Images from Johns Hopkins University’s Coronavirus Resource Center).
8. These events placed significant strain on New York State’s healthcare system. For example, as the virus spread, New York faced a shortage of hospital beds, ventilators, and

personal protective equipment such as masks and gloves.

9. As a result, field hospitals were set up around the state, including at the Javits Center in New York City. The United States Navy sent the U.S.N.S Comfort, a Mercy-class hospital ship, to New York to assist with medical care.
10. Funeral homes were also overwhelmed, resulting in the use of mass graves to bury the dead.
11. At the worst stage of the pandemic, New York State had more coronavirus cases than any single country in the world.

New York State on PAUSE

12. Public health efforts aimed to stop the pandemic from overwhelming our healthcare system are sometimes referred to as “flattening the curve.” The “curve” in question refers to the projected increase in COVID-19 demands on the health care system over time. *See* Exhibit H (Projection Model). The rapid spread of COVID-19 in New York, in the United States, and worldwide, as detailed above, presented and continues to present a grave threat to New Yorkers and to New York’s health care system. However, by taking strong action to ensure social distancing as well as other important measures, that threat can be mitigated, and the curve can be flattened, so that the burdens of COVID-19 are spread over a longer period of time and our health care system can continue to function at a high level.
13. COVID-19 “spreads through droplets released into the air when an infected person coughs or sneezes. The droplets generally do not travel more than a few feet, and they fall to the ground (or onto surfaces) in a few seconds.” *See* Exhibit I (Johns Hopkins, “What is Coronavirus?”). “Current evidence suggests that SARS-CoV-2 may remain viable for

hours to days on surfaces made from a variety of materials.” *See* Exhibit J (CDC, “Cleaning and Disinfection for Households.”). COVID-19 has an incubation period of up to fourteen days. *See* Exhibit I (Johns Hopkins, “What is Coronavirus?”). Social distancing is one of the most effective means of limiting transmission of COVID-19. *Id.*

14. The CDC has thus issued guidance recommending that people comply with social distancing measures in order to prevent the spread of COVID-19. According to the CDC, “[l]imiting face-to-face contact with others is the best way to reduce the spread” of COVID-19. *See* Exhibit K (CDC, “Social Distancing”). In order to limit exposure to COVID-19 and slow its spread, the CDC recommends keeping at least six feet away from others outside your household and avoiding groups and crowded places.” Social distancing “is one of the best tools we have to avoid being exposed to this virus and slowing its spread locally and across the country and world” because it “helps limit contact with infected people and contaminated surfaces.” *See id.* (CDC, “Social Distancing.”).
15. As cases of COVID-19 rapidly increased across the globe, nations worldwide undertook emergency social distancing measures aimed at restricting its spread or “flattening the curve.” Many states, including New York, likewise have taken emergency action to ensure social distancing, flatten the curve, and slow the pandemic.
16. Among other measures aimed at flattening the curve, slowing the spread of COVID-19, and preventing the health care system from becoming overburdened, Governor Cuomo issued multiple Executive Orders restricting gatherings.
 - March 12, 2020 — gatherings in excess of five hundred people prohibited; smaller gatherings limited to 50 percent capacity; theaters in large cities closed. *See* Exhibit L (Executive Order 202.1).

- March 16, 2020 — gatherings in excess of 50 people prohibited; all bars, restaurants, gambling establishments, gyms, movie theaters indefinitely closed. *See* Exhibit M (Executive Order 202.3). All non-essential state and local workers to stay home, “except for those personnel essential to the . . . response to the COVID-19 emergency.” *See* Exhibit N (Executive Order 202.4). All schools closed until no earlier than April 1, 2020. *Id.*
- March 18, 2020 — All malls and places of public amusement closed. *See* Exhibit O (Executive Order 202.5).

17. On March 20, 2020, the governor announced the New York State on PAUSE initiative. In his press conference announcing the initiative, the Governor explained that “[w]e know the most effective way to reduce the spread of this virus is through social distancing and density reduction measures This executive order builds on the actions we have taken to reduce the spread of the virus and protect the wellbeing of our friends, colleagues and neighbors.” The 10-point New York State on PAUSE plan is as follows:

- All non-essential businesses statewide closed, effective March 22, 2020, at 8pm;
- Non-essential gatherings of individuals of any size for any reason (e.g. parties, celebrations or other social events) are canceled or postponed at this time;
- Any concentration of individuals outside their home must be limited to workers providing essential services and social distancing should be practiced;
- When in public individuals must practice social distancing of at least six feet from others;
- Businesses and entities that provide other essential services must implement rules that help facilitate social distancing of at least six feet;
- Individuals should limit outdoor recreational activities to non-contact and avoid activities where they come in close contact with other people;
- Individuals should limit use of public transportation to when absolutely necessary and should limit potential exposure by spacing out at least six feet from other riders;

- Sick individuals should not leave their home unless to receive medical care and only after a telehealth visit to determine if leaving the home is in the best interest of their health;
- Young people should also practice social distancing and avoid contact with vulnerable populations; and
- Use precautionary sanitizer practices such as using isopropyl alcohol wipes.

See Exhibit P (New York PAUSE). All of these actions were taken to limit the spread of the virus.

APRIL, MAY, and JUNE 2020—New York Appears to Flatten the Curve

18. Before the New York State on PAUSE initiative, the daily increase in the number of positive COVID-19 tests had been rising quickly. On March 19, the number of positive tests increased nearly 70%, from, 1,769 to 2,950. For the remainder of March and early April, the number of positive tests increased at an average rate of approximately 20% per day. On April 9, 2020, alone, over 10,000 people tested positive for COVID-19. Since April 9, 2020, the number of positive tests per day has declined steadily. On May 28, 2020, over 1,700 people tested positive for COVID-19. On June 29, 2020, 46,428 people were tested and only 319 tested positive—a positivity rate below .7 %. *See* Exhibit Q (Images from DOH's COVID-19 Tracker).
19. The transmission rate, also known as the reproduction rate—which measures the number of individuals infected on average by an infected individual—was at 1.4 percent. The transmission rate is now below 0.9. At the current transmission rate, the spread of COVID-19 is declining in New York State. *See* Exhibit R (Transmission Slides).
20. Due to the success of the people of the State of New York at flattening the curve, all New

York State regions have begun Phase Two of the re-opening process as of June 22, 2020, with multiple regions entering Phase Four. *See* Exhibit S (Images from New York Regional Monitoring Website).

The Pandemic Is Not Over

21. Despite the gains that New York has made, the pandemic is not over. On June 29, 2020, WHO reported 10,021,401 individuals confirmed positive for COVID-19, and 499,913 confirmed COVID-19 deaths worldwide. *See* Exhibit T (WHO Situation Report 161). On June 29, 2020, the CDC reported that 2,545,250 individuals in the United States had tested positive for COVID-19, and 126,369 had died of COVID-19. *See* Exhibit U (Image from CDC Coronavirus Disease Dashboard).
22. Indeed, during the week of June 23 through June 29, the United States reported the highest seven-day average of new COVID-19 cases. *See Id.*
23. As of June 30, 2020, 16 states had a positivity rate of over 10%, including Alabama, Arkansas, Arizona, California, Florida, Georgia, Idaho, Iowa, Louisiana, Mississippi, Nevada, North Carolina, South Carolina, Tennessee, Texas, and Utah. *See* Exhibit V (Image from COVID-19 Travel Advisory)¹

Efforts to Sustain the Gains New York has Made

24. In an effort to sustain the gains attributable to the PAUSE initiative, the Governor, on June 24, issued Executive Order 205, “Quarantine Restrictions on Travelers Arriving in New York.” The Order requires all travelers entering New York from a state with a positive test

¹ Found at <https://coronavirus.health.ny.gov/covid-19-travel-advisory> (last visited July 1, 2020)

rate higher than 10 per 100,000 residents, or higher than a 10% test positivity rate, over a seven-day rolling average, to quarantine for a period of 14 days consistent with Department of Health regulations for quarantine. *See* Exhibit W

25. Executive Order 205 gives discretion to the Commissioner of the Department of Health to issue additional protocols for essential workers, or for other extraordinary circumstances, when a quarantine is not possible, provided such measures continue to safeguard the public health.
26. On June 24, 2020, the Office of the Commissioner for the New York State Department of Health issued the “Interim Guidance for Quarantine Restrictions on Travelers Arriving in New York State Following Out of State Travel.” *See* Exhibit X
27. Fourteen days was selected as the quarantine period because fourteen days is understood to be the average incubation period for the COVID-19 virus. A person can be infected with the COVID-19 virus for up to fourteen days and not exhibit any symptoms. If a person is not exhibiting any symptoms fourteen days after entering the state, it is unlikely that he or she was infected with the virus at the time of entry.
28. The quarantine requirement is intended to both reduce the spread of the COVID-19 virus in New York and reduce and/or prevent a second undue strain on New York’s health care system.
29. The quarantine requirement is intended to reduce the risk posed by a large number of people entering New York. It does this by ensuring that, before individuals who have entered the state come into contact with others, they quarantine and wait for symptoms to develop (if any). The absence of developing symptoms consistent with COVID-19 greatly

reduces the likelihood that an individual has been infected with COVID-19.

30. Moreover, at the time the quarantine requirement was issued, and continuing to this day, other states, had much higher infection rates than New York's. Our concern was that people in those states would travel to New York and unknowingly infect people here, thus further increasing the spread of the virus and the number of COVID-19 cases in New York.
31. In fact, the quarantine requirement only affects individuals traveling from states with a positive test rate higher than 10 per 100,000 residents, or higher than a 10% test positivity rate, over a seven-day rolling average. Therefore, the quarantine requirement is tailored to only apply to individuals from states where there is a much greater likelihood that they are infected with COVID-19.
32. The purpose of the quarantine requirement is to reduce additional introductions of the virus into New York, limit new avenues of transmission, and slow the overall spread of the virus. There are exceptions in the quarantine rule for persons coming into New York to perform essential services, and we recognized that some of those people could be carrying the virus.
33. We determined that the risk from the people who would be exempt from the quarantine rule because they were performing essential services was relatively small. On the other hand, the risk from the people who, in the absence of a quarantine rule, would enter New York from specific states where the positivity rate was higher, was significantly larger.
34. The State of New York is not attempting to prevent travel to New York from persons currently out of state. Rather, our intent is to reduce the likelihood that any person who enters the state, whether a New York resident or not, could potentially transmit COVID-19 to others. We minimize the risk from those persons by ensuring that the vast majority

of persons who enter the state do not interact in the community until it is more certain that they were not carrying the COVID-19 virus at the time of their arrival. Self-quarantine both controls the spread of the virus and reduces the possibility that New York's health care system will be over-taxed by a sudden flood of new cases.

35. We carefully considered various alternatives to the 14-day quarantine requirement. For example, we considered whether it would be feasible to prohibit persons exhibiting COVID-19 symptoms from entering the state. However, any such requirement would be ineffective because, as discussed above, individuals can be infected with the virus for up to 14 days before exhibiting symptoms.

36. We also considered whether it might be feasible to prohibit persons who have been exposed to the coronavirus, and/or those who have been in close contact with infected individuals, from entering the state. But this approach would also be unworkable because it is impossible for a person to know definitively that he was not exposed. Individuals can be carriers and transmitters of COVID-19 long before they exhibit symptoms, so an individual can expose many people to the virus before he learns he is carrying it. In addition, a large percentage of transmission is thought to occur before an individual develops symptoms. Therefore, anyone the individual came in contact would have no way knowing of the potential exposure.

37. At this time, the 14-day quarantine requirement is a highly effective step to protect the progress that New York has made toward containing the COVID-19 virus and to reduce the threat to public health caused by infected persons who are entering New York. Conducting health screenings of persons entering the State would be inadequate because

an infected person can be asymptomatic for 14 days and therefore might not have an elevated temperature. Also, people can have elevated temperatures for a host of reasons other than being infected with the COVID-19 virus, so using temperature readings would screen out many people who are not, in fact, carrying the virus.

38. There are tests that can be used to detect the presence of the COVID-19 virus in an individual. However, at the beginning of the pandemic these tests were in short supply. While the supply of test kits has been increasing, there are still not sufficient quantities to test all of the millions of persons seeking to enter the state. There are also laboratory tests that can look for the presence of antibodies, which signify a possible prior infection with COVID-19. However, there is significant scientific uncertainty about the accuracy of antibody-based tests, as well as questions about their interpretation. As the supply of test kits increases, and we obtain better information about the interpretation of antibody tests, we will continue to evaluate the use of the tests as a substitute for, or an addition to, the existing quarantine requirement.
39. We recognize that there will be circumstances in which the 14-day quarantine rule might not be necessary. However, as a matter of public health policy, it is impossible to craft a rule that can account for every unique situation that might arise. Our goal in developing the quarantine requirement was to develop a rule that would account for the vast majority of risk posed by persons coming into New York from states with higher infections rates.
40. The 14-day quarantine requirement is the best way to adequately protect the public health while still ensuring that certain essential services and operations can continue.
41. True and accurate copies of the following documents are attached hereto:

- A. Exhibit A: WHO Situation Report 1.
- B. Exhibit B: Images from the New York State Department of Health's COVID-19 Tracker.²
- C. Exhibit C: Images from the CDC's Coronavirus Disease Dashboard.³
- D. Exhibit D: WHO Situation Report 57.
- E. Exhibit E: WHO Declares Global Pandemic
- F. Exhibit F: Image from Johns Hopkins University's Coronavirus Resource Center.⁴
- G. Exhibit G: Images from Johns Hopkins University's Coronavirus Resource Center.⁵
- H. Exhibit H: Projection Model
- I. Exhibit I: Johns Hopkins Article: What is Coronavirus?
- J. Exhibit J: CDC: Cleaning and Disinfection for Households.
- K. Exhibit K: CDC: Social Distancing.
- L. Exhibit L: Executive Order 202.1
- M. Exhibit M: Executive Order 202.3
- N. Exhibit N: Executive Order 202.4
- O. Exhibit O: Executive Order 202.5
- P. Exhibit P: New York PAUSE Initiative
- Q. Exhibit Q: Images from the New York State Department of Health's COVID-19

² Found at [https://covid19tracker.health.ny.gov/views/NYS- COVID19- Tracker/NYSDOHCOVID-19Tracker-DailyTracker?%3Aembed=yes&%3Atoolbar=no&%3Atabs=n](https://covid19tracker.health.ny.gov/views/NYS-COVID19-Tracker/NYSDOHCOVID-19Tracker-DailyTracker?%3Aembed=yes&%3Atoolbar=no&%3Atabs=n) (last visited June 1, 2020).

³ Found at <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html> (last visited June 1, 2020).

⁴ Found at <https://coronavirus.jhu.edu/map.html> (last visited June 1, 2020).

⁵ *Id.*

Tracker.⁶

R. Exhibit R: Transmission Slides

S. Exhibit S: Images from New York Regional Monitoring Website.⁷

T. Exhibit T: WHO Situation Report 161.

U. Exhibit U: Images from the CDC's Coronavirus Disease Dashboard.⁸

V. Exhibit V: Image from COVID-19 Travel Advisory

W. Exhibit W: Executive Order 205

X. Exhibit X: Interim Guidance for Quarantine Restrictions on Travelers Arriving in
New York State Following Out of State Travel.

Dated: June 30, 2020
Albany County, New York

Brad Hutton
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⁶ Found at [https://covid19tracker.health.ny.gov/views/NYS- COVID19- Tracker/NYSDOHCOVID-19Tracker-DailyTracker?%3Aembed=yes&%3Atoolbar=no&%3Atabs=n](https://covid19tracker.health.ny.gov/views/NYS-COVID19-Tracker/NYSDOHCOVID-19Tracker-DailyTracker?%3Aembed=yes&%3Atoolbar=no&%3Atabs=n) (last visited June 1, 2020).

⁷ Found at forward.ny.gov (last visited June 1, 2020).

⁸ Found at <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html> (last visited July 1, 2020).